

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301
Seabrook Supervisory Employees

Complainant

v.

Town of Seabrook

Respondent

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Case No. M-0592-18

Decision No. 2001-074

PRE-HEARING DECISION and ORDER

BACKGROUND

AFSCME Council 93, Local 2301, Seabrook Supervisory Employees ("Union") filed unfair labor practice charges on June 28, 2001 pursuant to RSA 273-A:5 I (a), (c), (e) and (h) alleging that the Town of Seabrook ("Town") and its agents have breached the parties collective bargaining agreement (CBA) and otherwise violated its statutory obligations when it allegedly undertook unilateral actions without negotiations resulting in the outsourcing of certain mosquito control functions.

The Town answers by generally denying the allegations of the Union and often cites as its basis that it is without sufficient information regarding several of the allegations and therefore must deny allegations necessary to the Union's complaint.

The Union requests relief first in the form of an immediate cease and desist order ostensibly pending a full hearing on the merits of their claim. However, there is insufficient information provided to the PELRB at this point in time to consider such exigent relief. Then, the Union seeks relief following a hearing on the merits of its complaint in the form of a finding that the Town undertaken unilateral action and has failed to negotiate in good faith thereby constituting an unfair labor practice. Further, on the basis of such a finding, it seeks a cease and desist order to prevent the Town from hiring and retaining a private contractor, to compel the Town to post and fill the position of Mosquito Control Officer and to reimburse the Union for costs attendant to this filing.

For its part, the Town seeks a dismissal of the Union's complaint and for an award of reasonable attorneys' fees and costs necessary to its defense of this complaint.

PARTICIPATING REPRESENTATIVES

For the Complainant: Jack McMath, NH Coordinator; Deputy Chief David Currier and Wayne Soini, General Counsel, AFSCME

For the Respondent: Robert D. Ciandella, Esquire

PRIMARY ISSUE FOR DETERMINATION BY THE BOARD

1. Whether or not the Town's conduct in connection with the hiring of a private contractor to perform the functions of the Mosquito Control Officer breached the parties' collective bargaining agreement or constituted an impermissible unilateral action violative of its obligation to negotiate in good faith thereby constituting an unfair labor practice?

STIPULATED FACTS

1. The Town of Seabrook (Respondent) employs persons to perform municipal and other public functions within its several departments and therefore is a public employer within the meaning of RSA 273-A:1 X.
2. The AFSCME Council 93, Local 2301, Seabrook Supervisory Employees (Petitioner) is the duly certified exclusive bargaining representative of a bargaining unit comprised of certain employees of the Respondent Town pursuant to RSA 273-A:10.
3. E. Russell Bailey has been the Town Manager of the Town of Seabrook during all times relevant to this matter.
4. Jack McMath was the Union's representative during negotiations of the existing CBA and at all other times relevant to these charges.
5. The Collective Bargaining Agreement relevant between these parties is effective from April 1, 1998 to March 31, 2001 and includes the position of "Mosquito Control Officer".
6. On or about April 18, 2001, at a meeting of the Board of Selectmen, there was a discussion about the Mosquito Control Program and that a particular private vendor was mentioned. The vendor mentioned was "Dragon Mosquito".
7. On or about May 1, 2001, the Town processed a mailing to all residents of Seabrook, notifying them about mosquito control.

8. By letter of May 3, 2001, the Town Manager acknowledged the existence of the position within the CBA and in that letter indicated to the Union that the Town planned "to post the vacancy within the next several weeks."

WITNESSES

For the Complainant:

1. Jack McMath, NH Coordinator for AFSCME
2. David Currier, President, Local 2301
3. Stan Katis, Custodian
4. Warner Knowles, Water and Sewer Superintendent

For the Respondent:

1. E. Russell Bailey, Town Manager
2. John Starkey, Public Works Director

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant:

1. Letter from McMath to Bailey, dated April 24, 2001
2. Letter from Bailey to McMath, dated May 3, 2001
3. Mailing to Seabrook Residents, dated May 1, 2001
4. Selectmen's Meeting Agenda for April 18, 2001
5. Monthly Report of the Selectmen's Meeting, dated April 18, 2001
6. Monthly Report of the Selectmen's Meeting, dated May 9, 2001

For the Respondent:

1. Correspondence listed by Complainant
3. Bargaining history documents regarding position (reserved)
4. Prior Postings of the position within the unit (reserved)

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be

understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

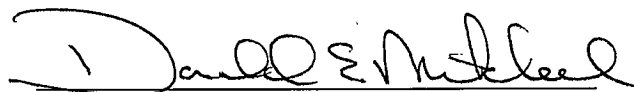
The time being set aside for a hearing of this matter is two hours. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

DECISION AND PRE-HEARING ORDER

1. The parties shall exchange any relevant historical bargaining notes, records or other written documents relevant to the position of Mosquito Control Officer and the outside contracting for mosquito control services.
2. The party representatives shall exchange their final Witness and Exhibit lists and each shall fax a copy of their respective list to the PELRB no later than August 17, 2001.
3. The party representatives shall meet, or otherwise arrange, to pre-mark for identification purposes, and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, prior to the scheduled hearing. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
4. Any preliminary, procedural or dispositive motions and supportive memoranda of law shall be filed by the parties no later than August 6, 2001 and delivered conventionally or electronically, by fax or e-mail, on that same date to the opposing party. The opposing party shall file any responsive pleadings and their own memoranda of law no later than August 17, 2001 and likewise expediently deliver a copy of same to the other party on that same day. The Town shall also have leave until August 6, 2001 to file its own separate claim alleging Union conduct constituting an unfair labor practice complaint to be heard at the same scheduled date as appears below.

Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on August 23, 2001 **beginning at 1:30 PM.**

Signed this 24th day of July, 2001.



Donald E. Mitchell, Esq.
Hearing Officer